

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DUMAR FISHER,) CASE NO. CV 11-4170-JSL (PJW)
)
 Petitioner,)
)
 v.) ORDER DISMISSING
) SECOND OR SUCCESSIVE
) HABEAS CORPUS PETITION
 FRANCISCO JACQUEZ, WARDEN,)
)
 Respondent.)
)

On May 16, 2011, Petitioner, a state prisoner proceeding *pro se*, filed a document entitled, "Traverse Concomitant to Attorney General's Motion Requesting Dismissal of Petitioner's Federal Habeas Corpus." A review of the Court's docket reveals that no such motion to dismiss has been filed. In fact, there is currently no pending federal habeas corpus case in Petitioner's name. The Court construes Petitioner's filing as a Petition for Writ of Habeas Corpus and, for the following reasons, dismisses the Petition.

It appears that Petitioner is attempting to challenge his 2000 convictions for robbery and attempted robbery. (See Petition, Ex. C.) He has previously challenged these same conviction in this court. In August 2004, the court denied his petition as untimely because it was not filed within the one-year statute of limitations. *See Fisher v.*

1 McGrath, CV 04-412-LGB (PJW), August 3, 2004 Order Accepting Report
2 and Recommendation of United States Magistrate Judge. Thereafter, the
3 Court denied Petitioner's application for a Certificate of
4 Appealability, as did the Ninth Circuit Court of Appeals. In October
5 2005, Petitioner filed an application for authorization to file a
6 second or successive habeas corpus petition, which was also denied.

7 Because his first petition was denied on the merits, Petitioner's
8 current Petition is subject to dismissal as being second and
9 successive. See 28 U.S.C. § 2244; see also *Reyes v. Vaughn*, 276 F.
10 Supp.2d 1027, 1029 (C.D. Cal. 2003) (holding dismissal based on
11 statute of limitations is an "adjudication of the merits for purposes
12 of determining whether subsequent petition is successive under the
13 AEDPA."). Absent an order from the appellate court, this Court does
14 not have jurisdiction to entertain a second or successive petition.
15 See 28 U.S.C. § 2244(3)(A). For this reason, the Petition is
16 dismissed.

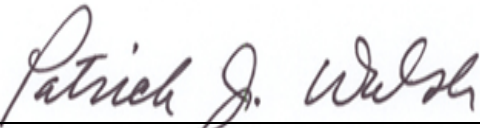
17 IT IS SO ORDERED.

18 DATED: June 2, 2011.



J. SPENCER LETTS
UNITED STATES DISTRICT JUDGE

21 Presented by:



PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE